



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201133015

Uniform Issue List: 408.03-00

MAY 24 2011

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SE: T: EP: RA: +y

Legend:

Taxpayer A = XXXXXXXXXXXXXXXX
Individual B = XXXXXXXXXXXXXXXX
Bank A = XXXXXXXXXXXXXXXX
IRA X = XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
IRA Y = XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXX
State C = XXXXXXXXXXXXXXXX
State M = XXXXXXXXXXXXXXXX
State N = XXXXXXXXXXXXXXXX
Amount A = XXXXXXXXXXXXXXXX
Date 1 = XXXXXXXXXXXXXXXX
Date 2 = XXXXXXXXXXXXXXXX
Date 3 = XXXXXXXXXXXXXXXX
Date 4 = XXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXX:

This letter is in response to your letter dated August 18, 2010, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age , represents that he received a distribution from IRA X totaling Amount A on Date 1. Taxpayer A asserts that his failure to accomplish a rollover of Amount A within the 60-day period prescribed by section 408(d)(3) was due to an error by an employee of Bank A. Taxpayer A also represents that Amount A has not been used for any other purpose.

Taxpayer A asserts that when IRA X matured, he intended to rollover the funds from IRA X to a new financial institution in State N, but was unable to do so because of work commitments out-of-state. Taxpayer A lives in State N and works in States C and M. Throughout much of the 60-day rollover period Taxpayer A had to work out-of-state. Near the end of the rollover period Taxpayer A asked his spouse, Individual B, to open a new IRA account on his behalf at Bank A. She attempted to open a new IRA account on Date 2, but was told by a Bank A associate that an IRA owner must be present in order for someone else to open an IRA on his behalf; and that Taxpayer A could open an IRA upon his return to State N even though the 60-day rollover period would have expired. When Taxpayer A returned to Bank A on Date 3, one day after the expiration of the 60-day rollover period, the Bank A associate reconfirmed that there would be no problem with exceeding the 60-day period. Taxpayer A deposited the IRA check into a new IRA account, IRA Y. Three days later on Date 4, Bank A informed Taxpayer A that there would be a problem with the 60-day rollover period being exceeded. Amount A remains in IRA Y at Bank A. Documentation from Bank A shows that it's associate provided Taxpayer A incorrect information about the 60-day rollover period.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount A from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to an error by Bank A.


Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount A from IRA X. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount A which was deposited into IRA Y, will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact XXXXX, ID XX-XXXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely,

for 

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose